

Hon. Ronald B. Leighton

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

THE ESTATE OF DEVAN THOMAS  
VYBORNY, CHRISTOPHER A. VYBORNY,  
Administrator; CHRISTOPHER VYBORNY  
and JANICE VYBORNY, individually and the  
marital community composed thereof,

Plaintiffs,

v.

THURSTON COUNTY, a municipal  
corporation and/or a political subdivision of  
the State of Washington, THURSTON  
COUNTY 911 DISPATCH/CALL CENTER,  
THURSTON COUNTY MEDIC ONE, JOHN  
DOE 1-10, and JANE DOE 1-10, in their  
individual capacities, and as employees of  
THURSTON COUNTY, and AIRLIFT  
NORTHWEST, a Washington corporation,  
and JOHN ROE 1-10 and JANE ROE 1-10, in  
their individual capacities and as employees  
of AIRLIFT NORTHWEST,

Defendants.

NO. 09-05197-RBL

**AIRLIFT NORTHWEST'S  
ANSWER AND AFFIRMATIVE  
DEFENSES**

JURY DEMANDED

Airlift Northwest answers plaintiffs' complaint as follows:

**I. ANSWER TO "PARTIES/JURISDICTION/VENUE"**

1.1 Airlift Northwest lacks knowledge sufficient to form a belief as to the

AIRLIFT NORTHWEST'S ANSWER & AFFIRMATIVE  
DEFENSES - 1  
(No. 09-05197-RBL)

LAW OFFICES OF  
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1 truth of the averments in paragraph 1.1 of the complaint.

2 1.2 Airlift Northwest lacks knowledge sufficient to form a belief as to the  
3 truth of the averments in paragraph 1.2 of the complaint.

4 1.3 Airlift Northwest lacks knowledge sufficient to form a belief as to the  
5 truth of the averments in paragraph 1.3 of the complaint.

6 1.4 Airlift Northwest lacks knowledge sufficient to form a belief as to the  
7 truth of the averments in paragraph 1.4 of the complaint.

8 1.5 Airlift Northwest lacks knowledge sufficient to form a belief as to the  
9 truth of the averments in paragraph 1.5 of the complaint.

10 1.6 Airlift Northwest lacks knowledge sufficient to form a belief as to the  
11 truth of the averments in paragraph 1.6 of the complaint.

12 1.7 Airlift Northwest lacks knowledge sufficient to form a belief as to the  
13 truth of the averments in paragraph 1.7 of the complaint.

14 1.8 No answer to paragraph 1.8 of the complaint is necessary, because this  
15 action has been properly removed to federal court.

16 1.9 In answer to paragraph 1.9 of the complaint, Airlift Northwest admits  
17 that it is a 501(c)(3) nonprofit organization incorporated under the laws of  
18 Washington. All other averments in paragraph 1.9 of the complaint are denied.

19 1.10 In answer to paragraph 1.10 of the complaint, Airlift Northwest admits  
20 that it was involved in providing helicopter medical transportation services in  
21 Thurston County on July 4, 2007. The helicopter and its pilots, however, were  
22 provided by CJ Systems Aviation Group (now Air Methods Corporation). All other  
23 averments in paragraph 1.10 of the complaint, if any, are denied.

II. ANSWER TO "FACTS"

2.1 Airlift Northwest lacks knowledge sufficient to form a belief as to the truth of the averments in paragraph 2.1 of the complaint.

2.2 Airlift Northwest lacks knowledge sufficient to form a belief as to the truth of the averments in paragraph 2.2 of the complaint.

2.3 Airlift Northwest lacks knowledge sufficient to form a belief as to the truth of the averments in paragraph 2.3 of the complaint.

2.4 Airlift Northwest lacks knowledge sufficient to form a belief as to the truth of the averments in paragraph 2.4 of the complaint.

2.5 Airlift Northwest lacks knowledge sufficient to form a belief as to the truth of the averments in paragraph 2.5 of the complaint.

2.6 In answer to paragraph 2.6 of the complaint, Airlift Northwest admits that Thurston County 911 ("Capital Comm") contacted Airlift Northwest to inquire about the availability of a helicopter to transport plaintiffs' decedent. Airlift Northwest lacks knowledge sufficient to form a belief as to the truth of all other averments in paragraph 2.6 of the complaint.

2.7 Airlift Northwest lacks knowledge sufficient to form a belief as to the truth of the averments in paragraph 2.7 of the complaint.

2.8 In answer to paragraph 2.8 of the complaint, Airlift Northwest admits that Thurston County 911 ("Capital Comm") canceled the potential service request when the crew was in the helicopter. Airlift Northwest lacks knowledge sufficient to form a belief as to the truth of all other averments in paragraph 2.8 of the complaint.

2.9 In answer to paragraph 2.9 of the complaint, Airlift Northwest admits

1 that Thurston County 911 ("Capital Comm") requested helicopter transport  
2 approximately eight minutes after the cancellation of the initial inquiry and then  
3 canceled this request shortly thereafter. Airlift Northwest lacks knowledge sufficient  
4 to form a belief as to the truth of all other averments in paragraph 2.9 of the  
5 complaint.

6 2.10 In answer to paragraph 2.10 of the complaint, Airlift Northwest admits  
7 that no helicopter medical transportation was provided to plaintiffs' decedent,  
8 because the request was canceled. Airlift Northwest lacks knowledge sufficient to  
9 form a belief as to the truth of all other averments in paragraph 2.10 of the complaint.

10 2.11 Airlift Northwest lacks knowledge sufficient to form a belief as to the  
11 truth of the averments in paragraph 2.11 of the complaint.

12 2.12 Airlift Northwest lacks knowledge sufficient to form a belief as to the  
13 truth of the averments in paragraph 2.12 of the complaint.

14 2.13 Airlift Northwest lacks knowledge sufficient to form a belief as to the  
15 truth of the averments in paragraph 2.13 of the complaint.

16 2.14 In answer to paragraph 2.14 of the complaint, Airlift Northwest admits  
17 that a CJ Systems Aviation Group (now Air Methods Corporation) pilot shift change  
18 mandated by federal law occurred just prior to the first call from Thurston County  
19 911 ("Capital Comm") to inquire about the availability of a helicopter to transport  
20 plaintiffs' decedent. All other allegations in paragraph 2.14 of the complaint if any  
21 are denied.

22 2.15 To the extent that any averments of paragraph 2.15 of the complaint are  
23 directed to Airlift Northwest, all such averments are denied. Airlift Northwest lacks  
24

1 knowledge sufficient to form a belief as to the truth of all other averments in  
2 paragraph 2.15 of the complaint.

3 2.16 Airlift Northwest lacks knowledge sufficient to form a belief as to the  
4 truth of the averments in paragraph 2.16 of the complaint.

5 2.17 To the extent that any averments of paragraph 2.17 of the complaint are  
6 directed to Airlift Northwest, all such averments are denied. Airlift Northwest lacks  
7 knowledge sufficient to form a belief as to the truth of all other averments in  
8 paragraph 2.17 of the complaint.

### 9 III. ANSWER TO "CAUSES OF ACTION"

10 In answer to the preamble to section III of the complaint, Airlift Northwest  
11 incorporates by reference its answers to the same paragraphs and denies that "said  
12 allegations are supportive" of any cause of action against Airlift Northwest.

13 3.1 To the extent that any averments of paragraph 3.1 of the complaint are  
14 directed to Airlift Northwest, all such averments are denied. Airlift Northwest lacks  
15 knowledge sufficient to form a belief as to the truth of all other averments in  
16 paragraph 3.1 of the complaint.

17 3.2 To the extent that any averments of paragraph 3.2 of the complaint are  
18 directed to Airlift Northwest, all such averments are denied. Airlift Northwest lacks  
19 knowledge sufficient to form a belief as to the truth of all other averments in  
20 paragraph 3.2 of the complaint.

21 3.3 To the extent that any averments of paragraph 3.3 of the complaint are  
22 directed to Airlift Northwest, all such averments are denied. Airlift Northwest lacks  
23 knowledge sufficient to form a belief as to the truth of all other averments in  
24

1 paragraph 3.3 of the complaint.

2 3.4 To the extent that any averments of paragraph 3.4 of the complaint are  
3 directed to Airlift Northwest, all such averments are denied. Airlift Northwest lacks  
4 knowledge sufficient to form a belief as to the truth of all other averments in  
5 paragraph 3.4 of the complaint.

6 3.5 To the extent that any averments of paragraph 3.5 of the complaint are  
7 directed to Airlift Northwest, all such averments are denied. Airlift Northwest lacks  
8 knowledge sufficient to form a belief as to the truth of all other averments in  
9 paragraph 3.5 of the complaint.

#### 10 IV. ANSWER TO "DAMAGES"

11 4.1 To the extent that any averments of paragraph 4.1 (including all  
12 subparagraphs) of the complaint are directed to Airlift Northwest, all such averments  
13 are denied. Airlift Northwest lacks knowledge sufficient to form a belief as to the  
14 truth of all other averments in paragraph 4.1 of the complaint.

#### 15 AFFIRMATIVE DEFENSES

16 By way of further answer, without conceding that it has the burden of proof as  
17 to any issue, Airlift Northwest asserts the following affirmative defenses:

18 1. Plaintiffs' complaint, in whole or in part, fails to state a claim upon  
19 which relief may be granted.

20 2. Plaintiffs' damages might have been caused or contributed to by the  
21 fault of plaintiff's decedent, in which case any judgment against Airlift Northwest  
22 should be reduced proportionately.

23 3. Plaintiffs' injuries and damages might have been caused or contributed

1 to by the fault of nonparties, including the manufacturer and seller of the cannon that  
2 injured plaintiffs' decedent, the manufacturer and seller of the charge with which the  
3 cannon was loaded, the person who loaded and fired the cannon, and any person  
4 responsible for supervising plaintiffs' decedent at the time of the accident. Any  
5 recovery from Airlift Northwest should be reduced in proportion to the degree of  
6 fault attributed to such nonparties. Airlift Northwest does not contend that CJ  
7 Systems Aviation Group (now Air Methods Corporation) or its pilots are at fault in  
8 any way, but to the extent that plaintiffs seek to impose liability based upon any acts  
9 or omissions of CJ Systems Aviation Group (now Air Methods Corporation) or its  
10 pilots, any recovery from Airlift Northwest should be reduced accordingly.

11 5. Plaintiffs' damages might have been caused by intervening or  
12 superseding causes.

13 6. Plaintiffs' causes of action or the applicable standard of care might be  
14 preempted by federal law.

15 7. Under the facts and circumstances of this action, Airlift Northwest  
16 might be immune from suit pursuant to RCW 4.24.300.

17 8. Plaintiffs might have failed to join necessary or indispensable parties.

18 Airlift Northwest reserves the right to amend or add affirmative defenses  
19 based upon further investigation and discovery.

### 20 JURY DEMAND

21 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Airlift Northwest  
22 demands that all issues herein be tried to a jury of twelve.

**PRAYER FOR RELIEF**

Airlift Northwest prays for relief as follows:

1. Dismissal of plaintiffs' action with prejudice;
2. An award to Airlift Northwest of its attorneys' fees and costs to the extent permitted by law; and
3. Any other relief the Court may deem just and equitable.

DATED: April 16, 2009

MILLS MEYERS SWARTLING  
Attorneys for Airlift Northwest

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CERTIFICATE OF SERVICE

I certify that on April 16, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Western District of Washington using the CM/ECF system which will send notification of such filing to:

Dean L. D'Mellow  
dmellowmk@yahoo.com


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And I hereby certify that I have mailed by United States Postal Service the foregoing to the following non CM/ECF participants: N/A

Signed at Seattle, Washington on April 16, 2009.

  
Kendra Brown  
Legal Assistant